

Nicholas J. Accurso, Esq. (NA 1853)
An Associate with the Firm of
REARDON & SCLAFANI, P.C.
Attorneys for Defendants
Avis and PV Holding
220 White Plains Road, Suite 235
Tarrytown, New York 10591
(914) 366-0201

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
DAWN BARKER,

Plaintiffs,

- against -

DECLARATION IN SUPPORT
OF DEFENDANTS' MOTION

08 CIV. 4517 (JSR) (JCF)

BRENDA A. ITHIER, PV HOLDING CORP.
and AVIS BUDGET GROUP, INC.,

Defendants.

-----x

Nicholas J. Accurso, an attorney duly admitted to practice before this Court and the Courts of the State of New York, declares the truth of the following under penalty of perjury:

1. That I am an associate of the law firm of Reardon & Sclafani, P.C., attorneys for the defendants Avis Budget Group, Inc. and PV Holding Corp.; and am fully familiar with the facts and circumstances of this action. I submit this declaration in support of the instant motion of the defendants Avis Budget Group, Inc. and PV Holding Corp. for an order pursuant to Fed. R. Civ. P. 56(b) and 49 USC 30106 dismissing the plaintiff's complaint against Avis Budget Group, Inc. and PV Holding Corp. and for an order pursuant to Rule 56(b) and New York State Vehicle and Traffic Law §388 dismissing the plaintiff's complaint against Avis Budget Group, Inc.

2. The plaintiff brings this action to recover damages for

personal injuries allegedly sustained in a motor vehicle accident which occurred on March 12, 2007 at approximately 12:15 p.m. on Jerome Avenue 300 feet west of its intersection with East 167th Street in The Bronx. (See ¶¶ 22-25 to the complaint at Docket #1.)

3. This action was commenced by the filing of a summons and complaint in the New York County Clerk's Office on May 2, 2008. Docket #1. On May 15, 2008, this action was removed to this Court pursuant to 28 USC §§1331, 1332, 1441(a) and 1446(b) based on the complete diversity of citizenship of the parties and the Court's federal question jurisdiction. Id. On May 21, 2008, the defendants Avis Budget Group, Inc. and PV Holding Corp. served their answer. Docket #7. The defendant Brenda Ithier served her answer on or about June 11, 2008.

4. At ¶¶ "9" and "27" of the plaintiff's complaint, it is alleged that on March 12, 2007, each of the moving defendants owned a 2007 Chevrolet automobile bearing New York State license plate number 35VB42. This is incorrect as the 2007 Chevrolet automobile involved in this accident actually bore Massachusetts plate number 35VB42. See affidavit of Joy Reiseman sworn to on the 30th day of July, 2008, the rental agreement at Exhibit A, the certified title report at Exhibit B and the "certification of no record found" from the New York State Department of Motor Vehicles for plate number 35VB42 at Exhibit C.

5. The certified certificate of title from the State of

Massachusetts conclusively shows that the 2007 Chevrolet bearing plate number 35VB42 referred to in plaintiff's complaint is owned by the defendant PV Holding Corp. (See also Reiseman affidavit.)

6. That the defendants PV Holding Corp. and Avis Budget Group, Inc. are affiliated with Budget Rent a Car System, Inc. and are engaged in the business of renting automobiles to the general public under the "Budget Rent a Car" trade name. On March 11, 2007, the subject 2007 Chevrolet Malibu was rented to the defendant Ithier. See Reiseman affidavit and rental agreement at Exhibit A.

7. As more fully set forth in the accompanying memorandum of law, pursuant to 49 USC §30106 and New York State Vehicle and Traffic Law §§128 and 388, the defendants Avis Budget Group, Inc. and PV Holding Corp. are entitled to summary judgment dismissing the plaintiff's complaint.

WHEREFORE, it is respectfully requested that the defendants' motion be granted in all respects and that plaintiff's action be denied in its entirety.


NICHOLAS J. ACCURSO

Sworn to and subscribed before
me this 31st day of July, 2008:


Notary Public

DAWN M. SEHLMAYER
NOTARY PUBLIC State of New York
No. 4954896 *Wash State*
Qualified in Dutchess County
Commission Expires Aug. 21, 19 *2009*

\$ - GUARANTEED
R - MANHATTAN GOLD (MANHATTAN LOCATIONS ONLY)

CHXXXXXXXXXXXX1136 3311 AIRPORT RD ALLENTOWN, PA. 18105, US 1143

>>RETURN(RA DOCUMENT 765136256 RENTED: 11MAR07/1918 AT: ALLENTOWN, PA APT PHONE: 610-266-0667 37821
CAR# 1 4 9 6 7 5 2 GRP C RETURN: 12MAR07/1413R AT: LAGUARDIA APO RATE: N /C TIME: 0 DY 10 HR
DUE IN: 12MAR07/1500 AT: ALLENTOWN, PA APT MIN 1 DAY

AL OUT: 17/03 AL IN: 17975 266 MI @ .00
TOTAL MILES DRIVEN: 266 *****OPTIONAL SERVICES***** 0 HR @ 15.00
PLATE: RA 35VW42 FUEL OUT: 8/8 0 DY @ 22.99
06E CHEV MALI 40R FUEL IN: 6/8 0 WK @
0 NO @

METHOD OF PAYMENT: MASTER 1136 PRE: 23.99/DAY DECLINED
UNIVERS LIC: USPAXXAX0130 PAF: 4.95/DAY DECLINED
BCNY H0111X ESP: 4.00/DAY DECLINED MIN 1DY/M /C 22.99
BCD: U074100 ALL: 12.95/DAY DECLINED TAX & MILEAGE 22.99
REMARKS: NSV/ HALF HOUR LATE FUEL SERVICE: .2728/MIL
RA DOCUMENT 765136256 0.045/GAL
*7% PASS CAR RENT TAX + .96
**11.11% FEE + 2.55
SUBTOTAL 26.00
TAX 5.0000 + 1.56
\$2.00/DAY SURCHARGE + 2.00
TOTAL CHARGES 29.56
AMOUNT DUE CY USD 29.56
* PA PASSENGER CAR RENT TAX
\$ 12.00/DY PA STATE SURCHARGE
**CONCESSION RECOVERY FEE

ITHIER, BRENDA
762 PENN ESTATES
EAST STROUDSBURG, PA, 18301, US

FASTBREAK

-----NOTICES-----NOTICES-----NOTICES-----NOTICES-----NOTICES-----NOTICES-----NOTICES

***THE AMOUNT THAT APPEARS IN "AMOUNT DUE" HAS BEEN
BILLED TO YOUR MASTER CARD.

***ALL CHARGES ARE SUBJECT TO AUDIT AND CHANGE IF ANY
ERRORS ARE FOUND.

***THANK YOU FOR RENTING FROM BUDGET.

***MINIMUM CHARGE IS 1 DAY (24 HRS) PLUS MILEAGE.

***FUEL SERVICES ADD'L IF CAR IS RETURNED WITH LESS
FUEL THAN WHEN RENTED.

00FC/280E/01075/19:10/F

***00-74 MILES, \$ 9.50 REFUELING SERVICE CHGE WILL
APPLY.

***I HAVE READ AND AGREE TO THE TERMS AND CONDITIONS
SHOWN ON THIS RENTAL DOCUMENT AND ON THE SEPARATE
RENTAL DOCUMENT JACKET DELIVERED TO ME WITH THIS
RENTAL DOCUMENT.

A SIGNATURE IS ON FILE..... RENTAL 1265136256
RES # 41174407-US-20
PREPARED BY: 32241 CLOSED BY: 15528

EXHIBIT "A"

CERTIFICATE OF TITLE

1496762 7F100704

THE COMMONWEALTH OF MASSACHUSETTS

TITLE NUMBER BD364789		VEHICLE IDENTIFICATION NUMBER 1G1ZT58N37F100704		DATE OF ISSUE 07/07/2006	
MFRS. MODEL YEAR 2007	MAKE CHEV	MODEL NAME MALIBU	MODEL NO.	BODY STYLE/TYPE SEDAN	NEW/USED NEW
CYL. PASS. ORS. 06 05 4	PURCHASE DATE 06/15/2006	ODOMETER READING 6	PREV. TITLE NO.		PREV. TITLE STATE
		ACTUAL MILEAGE	IF PREVIOUS STATE WAS TITLE EXEMPT, REGISTRATION NUMBER IS DISPLAYED		

MAILING ADDRESS ONLY:

BANK OF NEW YORK AS TRUSTEE
300 CENTRE POINTE DR
VIRGINIA BEACH, VA 23462

OWNER(S) NAME AND ADDRESS:

PV HOLDING CORP
375 MCCLELLAN HWY
E BOSTON, MA 02128-1177

TITLE TYPE AND BRANDS

TITLE TYPE

BRAND
BRAND
BRAND
BRAND

TITLE MESSAGE(S)

FIRST LIENHOLDER:

BANK OF NEW YORK AS TRUSTEE
300 CENTRE POINTE DR
VIRGINIA BEACH, VA 23462

SECOND LIENHOLDER:

NOTICE: ASEP Emblem Corporation, while it remains the owner of this vehicle, has been assigned all the rights, but none of the obligations, of the transferor related to the transfer of this vehicle. This is NOT an assignment of title and at no time will ASEP Emblem Corporation own or be the assignee of title to this vehicle. Transferees should detach and retain this notification prior to registering this title.

RELEASE OF FIRST LIEN:	
THE FIRST LIENHOLDERS INTEREST IN THE VEHICLE DESCRIBED IN THIS CERTIFICATE IS HEREBY RELEASED	
NAME:	
AUTHORIZED SIGNATURE:	
X	
DATE RELEASED:	

RELEASE OF SECOND LIEN:	
THE SECOND LIENHOLDERS INTEREST IN THE VEHICLE DESCRIBED IN THIS CERTIFICATE IS HEREBY RELEASED	
NAME:	
AUTHORIZED SIGNATURE:	
X	
DATE RELEASED:	

THE REGISTRAR OF MOTOR VEHICLES HEREBY CERTIFIES THAT AN APPLICATION FOR A CERTIFICATE OF TITLE FOR THE MOTOR VEHICLE DESCRIBED HEREIN HAS BEEN DULY FILED, PURSUANT TO THE PROVISIONS OF THE LAWS OF THE COMMONWEALTH OF MASSACHUSETTS, BASED ON THE STATEMENTS OF THE APPLICANT AND THE RECORDS ON FILE WITH THIS AGENCY, THE APPLICANT NAMED IS THE OWNER OF SAID VEHICLE.

THE REGISTRAR OF MOTOR VEHICLES FURTHER CERTIFIES THAT THE VEHICLE IS SUBJECT TO ANY SECURITY INTERESTS SHOWN HEREIN.

Anne L. Collins

Anne L. Collins
Registrar

CONTROL NO. F 2018425
NOT THE TITLE NUMBER

ALTERATION OR ERASURE VOIDS THIS TITLE.

KEEP IN SAFE PLACE

REGISTRY OF MOTOR VEHICLES

EXHIBIT "B"

Received Time Jun. 17. 2008 3:26PM No. 5235



Massachusetts Registry of Motor Vehicles

RMV Application Form 04517-JSR-4500
www.mass.gov/rmv

3. Number of Documents: (1) ☒ RO (Registration Only) ☐ RX (Registration Transfer)
4. ☐ ST (Salvage Title) ☐ RT (Registration & Title) ☐ TAR (Title Add Registration)
☐ TO (Title Only) ☐ SW (Summer/Winter Swap) ☐ SS (Surviving Spouse)

1. REG. EFF. DATE **06/21/2006** 2. REG. EXP. DATE

Registration/Vehicle Information

5. Plate Type
PAN

6. Registration Number
35UR318

7. Previous Title #

8. State

9. Type of Registration: ☒ Passenger ☐ Bus ☐ Taxi ☐ Livery ☐ Commercial
☐ Trailer ☐ Auto Home ☐ Semi-Trailer ☐ Motorcycle ☐ Other

10. Vehicle Identification Number:

1G1ZT58N37F100704

11. Year **2007** 12. Make **CHEV** 13. Model Name **MALIBU** 14. Model # **1ZT69** 15. Body Style **SEDAN** 16. Circle Color(s) of Vehicle **3-Orange 1-Black 2-Blue** 17. # of Cylinders/Passengers/Doors/Wheels **6 / 5 / 4 / 4**
3-Brown 4-Red 5-Yellow 6-Green 7-White 8-Gray 9-Purple

18. Transmission ☒ Automatic ☐ Manual
19. Total Gross Weight (Laden)
20. Motor Power ☒ Gasoline ☐ Diesel ☐ Propane ☐ Electric
☐ Conversion ☐ Hybrid ☐ Other

21. Bus: ☐ Regular ☐ DTE ☐ Livery ☐ Taxi ☐ School Pupil
If carrying passengers for hire, max no of passengers that can be seated: _____
If school bus, is it used exclusively for city, town, or school district? ☐ Yes ☒ No

Owner Information

22. Owner #1 MA License. Use SSN if out-of-state

23. Owner #2 MA License. Use SSN if out-of-state

24. EIN/FID # (see block 29)
510252246

25. Owner #1 Name (Last, First, Middle)

26. Owner #1 Date of Birth

27. Owner #2 Name (Last, First, Middle)

28. Owner #2 Date of Birth

29. Corp/Co/Organization Name (see block 24)

P.V. HOLDING CORP.

30. City/Town Where Vehicle is Principally Garaged:
BOSTON (001)

31. Mailing Address

City

State

Zip Code

375 MCCLELLAN HWY., E. BOSTON, MA 02128

32. Residential Address

City

State

Zip Code

33A. Lessee's MA License Number or EIN/FID Number. If out-of-state Lessee, use SSN and date of birth.

33B. Lessee's Name:

34. Lessee's Address, City, State, and Zip Code

Sales or Use Tax Schedule

56 A. SALE BY LICENSED MOTOR VEHICLE DEALER

MA DOR-Registered Dealer EIN/FID #

Total Sale Price \$
(adjusted for dealer's discount and manufacturer's rebate)

Less Manufacturer's Excise \$

Net Sales Price \$

Less Trade-in Allowance For \$

Yr. Make Model

Trade-in VIN

Taxable Sales Price \$

5% Sales Tax \$

B. SALES BY OTHER THAN MOTOR VEHICLE DEALER

Gross Sales Price (Proof Required) \$

5% Sales/Use Tax \$

C. CLAIM EXEMPTION FROM TAX CODE: **999078896**

Form Attached (if required)

Exempt Organization Certificate # **V**

Title Data

35. Date of Purchase
06/15/2006

36. Odometer Reading
006

37. ☒ New Vehicle ☐ Used Vehicle
38. Title Type: ☒ Clear ☐ Salvage ☐ Reconstructed
☐ Owner Retained ☐ Theft ☐ Prior Owner Retained

39. Primary Salvage Title Brands:

☐ Repairable ☐ Parts Only

40. Secondary Salvage Brand(s)

Lienholder Information

I/we certify that all liens on this vehicle are listed below

41. Date of 1st Lien
06/15/2006

42. Date of 2nd Lien

43. First Lienholder Code

C/31397

44. Name
THE BANK OF NEW YORK, AS TRUSTEE

45. Lienholder's Address

300 CENTRE POINTE DRIVE, VIRGINIA BEACH, VA 23462

46. Second Lienholder Code

47. Name

48. Lienholder's Address

Insurance Certification

The company signatory hereto hereby certifies that it has or will insure or guarantee performance by the applicant hereinbefore named with respect to the motor vehicle hereinbefore described for a period at least coterminous with that of such registration under a motor vehicle liability policy, binder or bond which conforms to the provisions of general laws, Chapter 175, Section 113A, and that the premium charge and classification on the effective date of registration are as established by the Commissioner of Insurance, Chapter 175A.

THE TRAVELERS INDEMNITY CO.

49A. Policy Effective Date: **06/21/2006**

Policy Change Date:

49B. Manual Class: **B&P** 49C. Ins. Company & Code: **887**

of Massachusetts
Licensed Agent
Per: **Authorized**

Insurance Co's Authorized Representative's Signature (Original Only)

Signatures

I/we the applicants hereby certify under the penalties of perjury that there are no outstanding excise tax liabilities on the vehicle described above that have been incurred by the applicant(s), any member of the applicant's immediate family who is a member of the applicant's household or the business partner of the applicant(s). I/we hereby further certify that all information contained in this application is true and correct to the best of my knowledge and belief. I/we understand that false statements are punishable by fine, imprisonment or both.

50. Signature of Owner From Block 25 or 29. If owner is listed in Block 29, signer must also print name.

Michael F. Hines

Michael F. Hines

51. Signature of 2nd Owner From Block 27.

52. Authorized Dealer Signature

Alisha Pisano

53. Dealer Reg. No.

Alisha Pisano

54. Seller's Name (Please Print)

PRESTIGE PONT-OLDS/AVIS

55. Seller's Address

P. O. BOX 651, PARSIPPANY, NJ 07054

Fee Information

57. Reg. \$ **31.5** Payment:

Title \$ **50** ☐ Cash

Tax \$ ☒ Check

P&I \$ ☐ EFT/CC

Total \$ **81.5** Clerk ID: **149676-2**

58. Batch No:

59. Clerk/End User Initials

149676-2

ORIGINAL

CERTIFICATE OF ORIGIN FOR A VEHICLE

0934



RBLPD019

DATE
06/15/06

INVOICE NO.
1AD89709389

VEHICLE IDENTIFICATION NO.
1G1ZT58N37F100704

YEAR
2007

MAKE
CHEVROLET

BODY TYPE
MALIBU SEDAN 2LT

SHIPPING WEIGHT
3253

H.P. (S.A.E.)
36.5

G.V.W.
4280

NO. CYLS.
06

SERIES OR MODEL
1ZT69

P.O. NUMBER 7017641N0200000

I, the undersigned authorized representative of the company, firm or corporation named below, hereby certify that the new vehicle described above is the property of the said company, firm or corporation and is transferred on the above date and under the Invoice Number indicated to the following distributor or dealer.

NAME OF DISTRIBUTOR, DEALER, ETC.

44287 KDFT8N

PRESTIGE CHEVROLET, INC./AVIS
6 SYLVAN WAY
PARSIPPANY

NJ 07054-3826

It is further certified that this was the first transfer of such new vehicle in ordinary trade and commerce.

* THIS VEHICLE *
* HAS A *
* CALIFORNIA *
* EMISSION *
* SYSTEM *

CHEVROLET MOTOR DIVISION
GENERAL MOTORS CORPORATION

BY:

(SIGNATURE OF AUTHORIZED REPRESENTATIVE)

(AGENT)

G46115550

DETROIT

MI 48243-1114

CITY - STATE

GM 521 REV. 10-05

44287
04
A
045
04

SCREEN PRINT TRANSACTION_ID: CA8681TJEJJI010817510905314

06/23/2008 09:05 MASSACHUSETTS REGISTRY OF MOTOR VEHICLES

UGR1210

TITLE AMEND

FUNCTION: T1A MSG: INQUIRY COMPLETE - DUP 0 LIEN 0 - ENTER ACTION

TITLE # : BD364789 VIN: 1G1ZT58N37F100704 BATCH#: 05812901010127

PLT TYP : PAN REG#: 35VB42 CLR: R

LIC #1 : LIC #2: FID#: 510252246 NEW TTL#:

ACT CD :

OWNER1 NAME L: F: M: DOB:

OWNER2 NAME L: F: M: DOB:

CORP/CO NAME : PV HOLDING CORP

MAIL ADDR : 375 MCCLELLAN HWY CITY: E BOSTON ST: MA ZIP 02128-1177

BLDG/APT : TITLE PRINT:

YEAR: 2007 MAKE: CHEV MODEL: MALIBU MODEL#: STYLE : SEDAN

CLR : BROWN / CYL : 06 PASS: 5 DOORS : 4 TRAN: A MTR PWR: G

PREV TITLE : PREV STATE:

STATUS/DATE: CANC - 05/08/2008 ENTRY DATE: 06/21/2006 PRINT DATE : 07/07/2006

PURCH DATE : 06/15/2006 ODOM : 6 NEW/USED: N TITLE RTN ST: KY

TITLE TYPE : CLEAR BRAND: REASON CODE :

LIENHOLDER 1 TYPE/CODE : C / 31397 LIENHOLDER 2 TYPE/CODE : /

BANK OF NEW YORK AS TRUSTEE

300 CENTRE POINTE DR

VIRGINIA BEACH VA 23462



New York State Department of Motor Vehicles
 Certified Document Center/Data Services
 6 Empire State Plaza
 Albany New York 12228

CERTIFICATION OF NO RECORD FOUND

Date June 5, 2008

Search Information:

Name (Last, First, Middle Initial) *****	Date of Birth *****	Client Identification Number 35VB412**	Plate Number *****
Street Address *****	Vehicle Identification Number (from vehicle registration) *****		
City *****	State NY	Zip Code *****	

Document Requested:

- ☐ Operating Record (includes all convictions and accidents)
- ☒ Vehicle Registration
- ☐ Vehicle Ownership

In compliance with your request, and using the search information shown above, I have caused a search to be made of the records of the Department of Motor Vehicles. I certify that, to date, no record has been found of the document requested.

Comments:

EXHIBIT "C"

Certified by,

Commissioner